STATE OF MICHIGAN

COURT OF APPEALS

DANIEL SUTTER and SHERYL SUTTER, Plaintiffs-Appellees,	UNPUBLISHED April 21, 2015
v	No. 320704 Ingham Circuit Court
OCWEN LOAN SERVICING, LLC, Defendant-Appellant.	LC No. 13-000642-CZ

Before: OWENS, P.J., and JANSEN and MURRAY, JJ.

PER CURIAM.

In this conversion action, defendant appeals by right the circuit court's entry of a default judgment in favor of plaintiffs. Defendant also challenges the circuit court's denial of its motions to set aside the default judgment and for relief from judgment, as well as the circuit court's award of attorney fees for plaintiffs. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

I

In 1994, plaintiffs purchased residential property in Lapeer, Michigan. Plaintiffs experienced financial difficulties in the mid-to-late 1990s, resulting in their petition for Chapter 7 bankruptcy. Plaintiffs were discharged from bankruptcy on January 30, 2004. Following their discharge, plaintiffs desired to refinance their existing mortgage obligations and entered into negotiations with World Wide Financial Services, Inc. (World Wide). World Wide agreed to loan plaintiffs $78,000 to pay off their existing debts. At the closing on April 8, 2004, plaintiffs executed a promissory note payable to World Wide in the amount of $78,000 plus interest.[1] However, plaintiffs did not sign a mortgage instrument.

World Wide created a "mortgage instrument" and forged plaintiffs' signatures on the document. The document purported to grant World Wide a mortgage interest in plaintiffs' Lapeer property and stated that it secured plaintiffs' obligation to repay the $78,000 loan. In

[1] The note did not refer to plaintiffs' Lapeer property and did not require plaintiffs to maintain insurance on the property.

addition, the document purported to require the borrowers to maintain insurance on the property and stated that the lender could obtain insurance on the property if the borrowers failed to do so. World Wide recorded the purported mortgage instrument with the Lapeer County Register of Deeds on May 25, 2004. World Wide then assigned the purported mortgage to U.S. National Bank (U.S. National), with Saxon Mortgage Services, Inc. (Saxon) acting as its mortgage servicing company.

Plaintiffs again fell behind on their payments. U.S. National and Saxon commenced foreclosure proceedings but plaintiffs filed a petition for Chapter 13 bankruptcy on November 21, 2005. Saxon filed a proof of claim in the Chapter 13 case, asserting a secured claim in the amount of $83,498.26, secured by plaintiffs' Lapeer property. Plaintiffs objected on the ground that they had never signed a mortgage instrument and the claim should therefore be disallowed. On appeal from the bankruptcy court, the United States District Court ultimately held that the purported mortgage was forged and therefore void *ab initio*. *In re Sutter*, unpublished opinion of the United States District Court for the Eastern District of Michigan, issued September 23, 2008 (Docket No. 08-cv-11174).

Meanwhile, U.S. National and Saxon assigned the purported mortgage and associated mortgage-servicing agreement to defendant in May 2011. It is unclear whether defendant was aware of the decision of the United States District Court at this time. On May 19, 2011, defendant sent a Notice of Assignment to plaintiffs, informing them that it was their "new servicer" and that plaintiffs should direct their "monthly mortgage payments" to defendant instead of Saxon. On October 29, 2011, defendant sent a letter informing plaintiffs that it had obtained a "lender purchased" homeowner's insurance policy on their Lapeer property from American Security Insurance Company (American Security).

On January 3, 2012, the United States Court of Appeals for the Sixth Circuit affirmed the earlier decision of the district court, ruling that World Wide had forged the purported mortgage instrument and that "the district court was correct in holding that the World Wide mortgage on [plaintiffs'] property was void *ab initio*." *In re Sutter*, 665 F3d 722, 728 (CA 6, 2012). Applying Michigan law, the Court further held that an equitable mortgage could not be imposed on plaintiffs' property. *Id*. at 728-732.

On July 28, 2012, defendant sent a letter informing plaintiffs that it had renewed the American Security insurance policy on their Lapeer property. The renewed policy of insurance listed defendant as the "Named Insured/Mortgagee" and listed plaintiffs as "Additional Insured[s]." The annual renewal premium was listed as $695. The renewed policy stated that it would remain in effect through May 17, 2013.

On or about January 1, 2013, a windstorm caused substantial damage to plaintiffs' Lapeer property. Plaintiffs, apparently through their attorneys, made a claim for the wind damage under the policy of insurance with American Security.

On April 16, 2013, plaintiffs' attorneys sent a letter to defendant informing it of the federal court's decision in *In re Sutter*, 665 F3d 722, and stating that "[defendant] does not have an enforceable mortgage in regard to [plaintiffs'] property." Plaintiffs' attorneys asked

defendant to send any further communications concerning plaintiffs' loan or property to their law office.

On May 1, 2013, American Security sent a letter to plaintiffs' attorneys stating that it had approved plaintiffs' claim and had mailed a check in the amount of $16,860.68 to defendant. Specifically, American Security's letter provided in relevant part:

> Our review of your claim has been completed. Pursuant to the provisions of the policy a check in [the] amount of $16,860.68 has been issued and been mailed to Ocwen Loan Servicing for damage to the home. The check was made payable to Ocwen Loan Servicing, Daniel Sutter, Sheryl Sutter, and [plaintiffs' attorneys]. You will need to contact Ocwen Loan Servicing to arrange distribution of the funds.

Further, American Security explained that it would provide an additional "$4,482.69 in recoverable depreciation" once the home repairs were actually completed.

Defendant did not contact plaintiffs or their attorneys regarding the $16,860.68 check from American Security. Plaintiffs' attorneys therefore reached out and spoke with various employees of defendant in an attempt to arrange a distribution of the funds. Plaintiffs' attorneys sent additional communications to defendant as well, but did not hear back.

On June 12, 2013, plaintiffs filed the present action in the Ingham Circuit Court alleging that defendant was wrongfully withholding the $16,860.68 check. Plaintiffs sought declaratory and injunctive relief compelling defendant to release the funds. Plaintiffs also asserted a claim of conversion, alleging that (1) defendant was not entitled to the funds because it had no insurable interest in the property, and (2) defendant had wrongfully converted the funds for its own use. Plaintiffs requested that defendant be compelled to show cause why it should not be ordered to release the funds.

The circuit court scheduled a show cause hearing for July 10, 2013. Defendant was notified of the hearing by certified mail. Plaintiffs' counsel participated in the hearing but defendant did not appear. The circuit court entered an order directing defendant to immediately release the $16,860.68 to plaintiffs' attorney.

Defendant failed to answer plaintiffs' complaint and the clerk of the circuit court entered a default on July 22, 2013. Plaintiffs moved for a default judgment and the circuit court scheduled a hearing for August 28, 2013.

On August 21, 2013, defendant finally appeared in the matter and moved to set aside the default. Defendant attached an affidavit purporting to set forth good cause for failing to answer the complaint and a meritorious defense. Defendant represented that it had turned over the $16,860.68 check to plaintiffs' attorneys on July 26, 2013. In response, plaintiffs argued that (1) defendant had belatedly turned over the check but still refused to endorse it, (2) defendant had not shown good cause for failing to answer the complaint or for withholding the check for more than two months, (3) defendant had no insurable interest in plaintiffs' property because the purported mortgage had been found void *ab initio* by the federal courts, (4) defendant therefore had no interest in the $16,860.68 insurance proceeds, (5) the check was a negotiable instrument

under Article 3 of the Uniform Commercial Code (UCC) and had been converted by defendant in violation of MCL 440.3420, and (6) plaintiffs were entitled to costs and attorney fees.

At oral argument, defense counsel stated that defendant had good cause for failing to answer the complaint because "there was a misunderstanding as to the handling of the case." She explained that there had been a "miscommunication" regarding which attorney defendant was going to retain to represent it in the matter. Defense counsel stated that plaintiffs had made no payments on the loan, had not paid property taxes, and had not maintained insurance on the premises. Counsel argued that defendant had an interest in the proceeds because it was named as a payee on the check; she pointed out that defendant had not endorsed the check, deposited the check, or attempted to cash the check. She argued that there had been no conversion. She contended that, because it was defendant that had obtained the insurance policy, defendant's interest in the insurance proceeds was superior to any interest possessed by plaintiffs.

Plaintiffs' counsel argued that defendant had converted the check. Plaintiffs' counsel stated that defendant had never responded to his letters or telephone calls after receiving the check from the insurance company in early May 2013. Counsel argued that plaintiffs had no choice but to file a lawsuit.

After hearing the attorneys' arguments, the circuit court determined that defendant had not established good cause for failing to answer the complaint. The court also determined that the affidavit attached to defendant's motion to set aside the default was conclusory and insufficient to establish a meritorious defense. The circuit court noted, "there's no mortgage so it's difficult to discern how the defendant could have and right to the insurance proceeds as the purported servicer of a mortgage that doesn't exist." The court denied defendant's motion to set aside the default and granted plaintiffs' motion for entry of a default judgment.

On August 28, 2013, the circuit court entered a default judgment in favor of plaintiffs, which provided in pertinent part:

> 1. The Court declares that the Plaintiffs are entitled to receive the American Security Insurance Company payment of $16,860.68 less the $695 insurance premium.
>
> 2. The Court declares that the Plaintiffs shall be entitled to receive the additional American Security Insurance Company payment of $4,482.69 after the repairs to the Plaintiffs' home are completed.
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> 3. The Defendant Ocwen Loan Servicing, LLC and all persons acting in participation therewith are enjoined and ordered to endorse the American Security Insurance Company check in the amount of $16,860.68 and deliver said endorsed check to the Plaintiffs (through their attorneys).
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> 4. The Plaintiffs are hereby awarded damages in the amount of $48,497.04, which is three times the amount of the American Security Insurance Company check, arising out of the Defendant Ocwen's conversion thereof. MCL 440.3420(1) and/or MCL 600.2919a(1).

5. Plaintiffs are awarded pre-judgment interest on the damages awarded above from June 12, 2013 to August 28, 2013, and post-judgment interest from August 28, 2013 until the Defendant satisfies the judgment. MCL 600.2013(8).

6. The Plaintiffs are entitled to recover their reasonable and actual attorney fees. MCL 600.2919a(1). In this regard, the Plaintiffs shall present their proposed attorney fee award to the Court within 21 days of the entry of this Default Judgment.

7. The Plaintiffs may tax their taxable costs. MCR 2.625.

The circuit court entered a separate order denying defendant's motion to set aside the default.

Plaintiffs' attorneys submitted a bill of costs in which they claimed to have rendered legal services in the amount of $17,211.50. Defendant filed a motion for relief from judgment.

At oral argument, plaintiffs' attorney pointed out that (1) defendant had never endorsed the check, (2) the check was only valid for 180 days (which had expired), and (3) plaintiffs had therefore been deprived of the opportunity to receive the insurance proceeds. The circuit court asked whether the insurance company could reissue the check. Counsel for plaintiffs was not certain about this.

Defense counsel argued that, before entering the default judgment, the circuit court was still required to ascertain whether plaintiffs' pleadings stated a valid claim on which relief could be granted. According to defense counsel, plaintiffs' complaint failed to state a legally cognizable claim of conversion and the court was therefore precluded from entering the default judgment. Counsel argued that defendant could not have converted the insurance proceeds because, as a named insured in the policy and a named payee on the check, it was rightfully entitled to the funds.

Defense counsel argued that the action had been filed in the wrong venue—Ingham Circuit instead of Lapeer Circuit—and that this procedural defect warranted setting aside the default and default judgment. Defense counsel also argued that following the previous hearing in August, defendant had made a "good faith" offer to endorse the check and place it in escrow. But plaintiffs had rejected this idea. Defense counsel stated that there were still issues remaining to be litigated in the bankruptcy court and that defendant was simply unwilling to endorse the check in light of this remaining uncertainty. Counsel stated that defendant was still willing to place the insurance proceeds in escrow pending a "global resolution" of all the issues—including those pending in the bankruptcy court.

The circuit court noted that defendant's offer to place the check in escrow might have been acceptable if defendant had answered the complaint. However, the court noted that defendant's offer was late as defendant had already defaulted and a default judgment had been entered. The court pointed out that defendant's argument concerning improper venue was first raised in its motion for relief from judgment. The court found that defendant's objection to venue was untimely and should have been raised earlier.

Lastly, the circuit court rejected defendant's argument that plaintiffs' complaint had failed to state a valid claim of conversion. The court ruled that even though defendant was named as an insured in the policy, and despite the fact that American Security had listed defendant as one of the payees on the check, defendant had no interest in the insurance proceeds. The court explained that the mortgage was forged and void *ab initio*, and that defendant accordingly had no valid lien or other insurable interest in plaintiffs' Lapeer property. The court remarked, "it's just a logical conclusion that if [defendant] had no right to the check, . . . then it had no right to withhold the check from the only rightful payees, the plaintiffs."

The circuit court noted that it would deny defendant's motion for relief for judgment, but would modify its earlier order to provide "temporary conversion" damages only. In essence, the court held that plaintiffs had only been temporarily deprived of the use of the insurance proceeds, not permanently deprived thereof, and that it would amend its judgment to reflect this. The court scheduled a hearing on plaintiffs' request for attorney fees.

On December 5, 2013, the circuit court entered an order effectuating its ruling. The court stated that paragraph 4 of its earlier default judgment would be modified. Instead of tripling the entirety of plaintiffs' damages under the conversion statute, the court would only triple the daily interest of which plaintiffs were actually deprived. The court determined that plaintiffs had been deprived of the check for 201 days, from May 3, 2013, through the date of the hearing on November 20, 2013. Under MCL 438.31, the court calculated the interest on $16,860.68 at a rate of five percent, or $808.28. Dividing $808.28 by 365, the court determined that the daily interest of which plaintiffs had been deprived was $2.21. Multiplying this figure by three to treble plaintiffs' damages under the conversion statute, the court concluded that plaintiffs were entitled to statutory-conversion damages in the amount of $6.63 per day for 201 days, or $1,332.63, plus $6.63 per day for each additional day after November 21, 2013.

In sum, the court amended the default judgment to provide that plaintiffs were entitled to damages of $16,860.68 (the amount of the insurance proceeds), plus $1,332.63 (statutory "temporary conversion" damages for the period between May 3, 2013, and November 20, 2013), plus "$6.63 per day from November 21, 2013, until the Defendant satisfies the Judgment." The court also ordered defendant to contact American Security and ask it to reissue the check, "payable only to Daniel Sutter, Sheryl Sutter, and their attorneys . . . in the amount of $16,860.68."

Defendant filed a motion for reconsideration, but the motion was denied. Defendant then filed a motion for relief from the circuit court's judgment of December 5, 2013. The court denied defendant's motion for relief from judgment on February 11, 2014.

Following an evidentiary hearing on plaintiffs' request for attorney fees, the circuit court issued an opinion and order on February 11, 2014, directing defendant to pay plaintiffs "the amount of $44,022.00 in reasonable attorney fees pursuant to MCL 600.2919a(1)." The court also ordered defendant to pay plaintiffs "the amount of $2,000 as costs taxed in this matter."

Defendant timely filed its claim of appeal in this Court on March 4, 2014.

II

We review for an abuse of discretion the circuit court's decision to enter a default or default judgment. *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003). We similarly review for an abuse of discretion the circuit court's decision whether to set aside a default or default judgment. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999).

All underlying questions of law, such as whether the pleadings set forth a claim on which relief can be granted, are reviewed de novo. See *In re Rudell Estate*, 286 Mich App 391, 403; 780 NW2d 884 (2009); see also *Hofweber v Detroit Trust Co*, 295 Mich 96, 101; 294 NW 108 (1940). Issues of statutory interpretation are also reviewed de novo. *ISB Sales*, 258 Mich App at 526.

III

The entry of a default does not operate as an admission that the pleadings state a legally cognizable cause of action. *Hofweber*, 295 Mich at 100. If the complaint fails to state a claim on which relief can be granted, it cannot support a default judgment and is subject to dismissal. *Id.*; *State ex rel Saginaw Co Prosecuting Attorney v Bobenal Investments, Inc*, 111 Mich App 16, 22; 314 NW2d 512 (1981). When the plaintiff has failed to state a legally cognizable claim, a default judgment should not be entered. See *Hunley v Phillips*, 164 Mich App 517, 523; 417 NW2d 485 (1987).

Michigan statutory-conversion claims are governed by MCL 600.2919a(1), which provides in relevant part:

> (1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees:
>
> (a) Another person's stealing or embezzling property *or converting property to the other person's own use*.
>
> * * *
>
> (2) The remedy provided by this section is in addition to any other right or remedy the person may have at law or otherwise. [Emphasis added.]

The purpose of the conversion statute is not merely to restore the plaintiff to his or her original condition, but to *penalize* the converting defendant by authorizing treble damages. *New Properties, Inc v George D Newpower, Jr, Inc*, 282 Mich App 120, 137; 762 NW2d 178 (2009).

"Conversion is any distinct act of dominion wrongfully exerted over another's personal property." *Trail Clinic, PC v Bloch*, 114 Mich App 700, 705; 319 NW2d 638 (1982). "Conversion does not necessarily imply a complete and absolute deprivation of personal property. There may be a deprivation that is only temporary, as where the plaintiff's personal property is restored to him." *Pamar Enterprises, Inc v Huntington Banks of Mich*, 228 Mich

App 727, 734; 580 NW2d 11 (1998). Conversion is committed when a party refuses to surrender personal property after demand has been made. *Thoma v Tracy Motor Sales, Inc*, 360 Mich 434, 438; 104 NW2d 360 (1960).

"A check is considered the personal property of the designated payee." *Pamar Enterprises*, 228 Mich App at 734. "Checks . . . may be the subject of a suit for conversion." *Trail Clinic*, 114 Mich App at 705; see also *Warren Tool Co v Stephenson*, 11 Mich App 274, 298-299; 161 NW2d 133 (1968). "Pursuant to MCL 440.3110(4), an instrument made payable to two or more persons not alternatively, is payable to all of them and may be negotiated, discharged, or enforced only by all of them." *Pamar Enterprises*, 228 Mich App at 733.

We acknowledge that by failing to endorse the $16,860.68 check, defendant temporarily prevented plaintiffs from obtaining the use of the funds. This might have been sufficient to constitute common-law conversion. However, defendant did not convert the check "to [its] own use" within any reasonable understanding of MCL 600.2919a(1)(a). Defendant never cashed the check or deposited the check. Instead, defendant merely held the check for a period of time, declining to endorse it. Quite simply, defendant never "use[d]" the check or employed the funds represented by the check for any purpose. See *Aroma Wines & Equip, Inc v Columbian Dist Services, Inc*, 303 Mich App 441, 448; 844 NW2d 727 (2013). There was no statutory conversion under MCL 600.2919a(1)(a).[2]

We conclude that plaintiffs' pleadings failed to state a legally cognizable claim of statutory conversion. The circuit court therefore abused its discretion by granting a default judgment on this issue. See *Hofweber*, 295 Mich at 100; *Hunley*, 164 Mich App at 523. We reverse the default judgment of August 28, 2013, and the subsequent order of December 5, 2013, to the extent that they granted judgment in favor of plaintiff on a theory of statutory conversion. We also reverse the portions of the default judgment of August 28, 2013, and the subsequent

[2] In *Aroma Wines*, 303 Mich App at 448, this Court concluded that "[t]he term 'use' [in MCL 600.2919a(1)(a)] requires only that a person 'employ for some purpose.' " But we find *Aroma Wines* to be distinguishable from the case at bar. The *Aroma Wines* Court concluded that the defendant's "act of moving plaintiff's wine contrary to the contract in order to undertake an expansion project to benefit itself" could potentially constitute "use" within the meaning of the statute "[i]f a jury believed . . . that defendant moved plaintiff's wine for its own purposes." *Id*. at 448-449. In the present case, on the other hand, defendant's handling of the insurance check was entirely passive. The insurer, American Security, sent the check directly to defendant, which was identified as the primary insured and named as a payee on the check. Defendant never requested or demanded the check from American Security; nor did defendant ever cash, deposit, endorse, or otherwise negotiate the check for its own purposes. Instead, believing that it had a potential offset against plaintiff for the premium payments or other claims, defendant merely held onto the check and did nothing with it. Defendant did not convert the check to its "own use" within the meaning of 600.2919a(1)(a).

order of December 5, 2013, that awarded plaintiffs treble damages for statutory conversion and/or temporary statutory conversion under MCL 600.2919a(1).[3]

IV

Under the American rule, attorney fees are not recoverable from the losing party in the absence of an exception set forth in a statute or court rule. *Haliw v Sterling Heights*, 471 Mich 700, 707; 691 NW2d 753 (2005). Because there was no statutory conversion in this case, plaintiffs were not entitled to attorney fees under MCL 600.2919a(1). Nor does any other statute, court rule, or common-law principle authorize plaintiffs to recover their attorney fees in the instant case.[4] We reverse the circuit court's opinion and order of February 11, 2014, insofar as it awarded plaintiffs their attorney fees in the amount of $44,022.00.

V

Count III of plaintiffs' complaint was not limited to a theory of statutory conversion. The allegations in plaintiffs' complaint pertained to common-law conversion as well.

We do not doubt that defendant honestly believed, at least initially, that it had a valid mortgage and therefore an insurable interest in plaintiffs' Lapeer property. As explained earlier, however, the federal courts have determined that the mortgage was forged and void *ab initio*. *In re Sutter*, 665 F3d at 727-728. A party that obtains or purchases a forged mortgage—even if it does so innocently or in good faith—acquires no rights or interests by way of the forged instrument. See *Special Property VI v Woodruff*, 273 Mich App 586, 591; 730 NW2d 753 (2007); *Vanderwall v Midkiff*, 166 Mich App 668, 685; 421 NW2d 263 (1988). " 'There can be no such thing as a bona fide holder under a forgery.' " *Horvath v Nat'l Mortgage Co*, 238 Mich 354, 360; 213 NW 202 (1927) (citation omitted). Defendant consequently acquired no insurable interest in the Lapeer property when it took the forged mortgage by assignment.

"[F]undamental principles of insurance . . . require that a person shall have an insurable interest before he can insure." *Agricultural Ins Co v Montague*, 38 Mich 548, 551 (1878). "[A] policy issued when there is no such interest is void, and it is immaterial that it is taken in good faith and with full knowledge." *Id*. The policy of insurance at issue in this case was void as to defendant, which had no insurable interest in the subject property. However, plaintiffs were listed as "Additional Insured[s]" and did have an insurable interest in the property. An insurance policy may be void as to a primary insured with no insurable interest, but remain in full effect as

[3] The circuit court also cited MCL 440.3420(1). MCL 440.3420(1) merely provides, in relevant part, that "[t]he law applicable to conversion of personal property applies to instruments." Even though temporary common-law conversion occurred in this case, neither MCL 440.3420(1) nor the common law authorizes an award of treble damages for the conversion of a negotiable instrument.

[4] MCL 440.3420(1), which pertains to the conversion of negotiable instruments, does not authorize the award of attorney fees.

to an additional named insured that possesses an insurable interest. See *Victory Container Corp v Calvert Fire Ins Co*, 109 AD2d 631, 633; 486 NYS2d 211 (1985). We conclude that the policy was not void as to plaintiffs, who possessed an insurable interest in the property. Plaintiffs, as additional named insureds, are entitled to the insurance proceeds.

As noted, common-law conversion "does not necessarily imply a complete and absolute deprivation of personal property. *There may be a deprivation that is only temporary*, as where the plaintiff's personal property is restored to him." *Pamar Enterprises*, 228 Mich App at 734 (emphasis added). Among other things, the tort of common-law conversion is committed when a party refuses to surrender personal property, such as a check, after demand has been made. *Thoma*, 360 Mich at 438. Although defendant did not cash the check or steal the funds, it did refuse to endorse the check and turn it over to plaintiffs in a timely manner. This was sufficient to constitute an act of common-law conversion. We remand to the circuit court for modification of the default judgment to clarify that plaintiffs are entitled to recover the $16,860.68 insurance check, less the $695 premium paid by defendant, under a theory of common-law conversion.

VI

Plaintiffs also sought declaratory and injunctive relief in this case. In the default judgment, the circuit court declared that (1) plaintiffs are entitled to receive the $16,860.68 insurance check, less the $695 premium paid by defendant, and (2) plaintiffs are entitled to receive the additional insurance payment of $4,482.69 after the repairs to the property are completed. In its subsequent order of December 5, 2013, the court ordered defendant to request that American Security reissue the check, "payable only to Daniel Sutter, Sheryl Sutter, and their attorneys . . . in the amount of $16,860.68."[5] Plaintiffs were entitled to this specific relief and we will not disturb the circuit court's rulings in this regard.

VII

Given our resolution of the issues, we need not consider whether defendant had good cause and a meritorious defense sufficient to set aside the default. In addition, we need not address defendant's arguments concerning its motions to set aside the default judgment and for relief from judgment.

We affirm the circuit court's grant of declaratory and injunctive relief in favor of plaintiffs as discussed in part VI, *supra*. We reverse the circuit court's entry of default judgment on the issue of statutory conversion. We also reverse the circuit court's award of treble damages under MCL 600.2919a(1). Lastly, we reverse the court's award of attorney fees for plaintiffs. For the reasons stated in part V, *supra*, we remand to the circuit court for modification of the

[5] In the default judgment, the circuit court also ordered defendant to endorse the $16,860.68 check and turn it over to plaintiffs. However, the court was subsequently informed that the check had expired after 180 days and was no longer negotiable. Accordingly, in its order of December 5, 2013, the court ordered defendant to request reissuance of the check.

default judgment to clarify that plaintiffs are entitled to recover the $16,860.68 insurance check, less the $695 premium paid by defendant, under a theory of common-law conversion.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, no party having prevailed in full.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Christopher M. Murray